

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John M. Tremaine, New Canaan

File No. 2015-097A

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between the New Canaan Registrars of Voters Office, of the Town of New Canaan, County of Fairfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:¹

1. At all times relevant to the instant Complaint, George Cody and Kathleen Redman were the New Canaan Registrars of Voters.
2. The Complainant here alleged that he went to vote at a Republican caucus in the town of New Canaan in July 2015 only to discover that there was no record of his ever having been a registered elector in that town, despite having lived and voted in town for 27 years. He alleged that his issue was not reparable at the caucus and that he was unable to cast a vote there. He asserted that after he brought the incident to the attention of the Respondent New Canaan registrars, they told him that something happened with the registration record of his twin brother Burton Tremaine in Essex in 2009 that caused his registration to be removed six years later in 2015 in New Canaan. While the Respondent New Canaan registrars immediately restored his registration after he brought it to their attention, he sought an investigation into what happened to cause his registration to be removed in the first place.
3. General Statutes § 9-21 reads, in pertinent part:

(a) If any applicant for admission as an elector in any town has previously been admitted as an elector in any other town in this state, or in any other state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam or the Trust Territory of the Pacific Islands, he shall, under penalties of perjury, so declare, and shall also declare by what name and in what town and state, district or territory he was last admitted as an elector and the street

¹ This Agreement Containing Consent Order addresses those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

address from which he last voted therein. *The admitting official shall within forty-eight hours thereafter transmit a notice of cancellation of such registration, upon a form prescribed by the Secretary of the State to the registrars of such other town or, in the case of a town in another state, district or territory, to the appropriate registration official or officials in such other town. Upon receipt of such notice of cancellation of registration, the registrars of the town from which such elector has removed shall forthwith erase the name of such elector from the registry list of the town, if the same has not been erased therefrom.* (Emphasis added.)

4. General Statutes § 9-32 reads, in pertinent part, as follows:

(a) In each municipality the registrars, between January first and May first, annually, shall cause either (1) a complete house to house canvass to be made in person of each residence on each street, avenue or road within such municipality, (2) a complete canvass to be made by mail of each residence located on each street, avenue or road within such municipality, provided, upon agreement of both registrars, the National Change of Address System of the United States Postal Service may be used instead of such mailing, (3) a complete canvass to be made by telephone of each residence located on each street, avenue or road within such municipality, or (4) a complete canvass of each residence within such municipality by any combination of such methods, for the purpose of ascertaining the name of any elector formerly residing on such street, avenue or road who has removed therefrom; provided in the odd-numbered years, no canvass need be conducted by the registrars in a town which holds its regular municipal election on the first Monday of May in odd-numbered years. The Secretary of the State shall adopt regulations in accordance with the provisions of chapter 54 setting forth the procedure to be followed in conducting any such canvass by either mail or telephone.

(b) *No elector's name shall be removed from the registry list, pursuant to section 9-35, unless (1) the elector confirms in writing that the elector has moved out of the municipality, or (2) the elector has been sent, by forwardable mail, a notice and a postage prepaid preaddressed return card in accordance with the National Voter Registration Act of 1993, P.L. 103-31, as amended from time to time, four years prior to removal from the registry list and such elector has failed to respond and has not restored the elector's name to the active registry list under section 9-42 or voted in an election or primary in the municipality during the period*

beginning on the date of the notice and ending four years later. If a registrar or a registrar's designee conducts a telephone canvass, a telephone call by any such person shall constitute an attempt to contact the elector only if the elector's household has a published telephone number and the telephone is in operating order. If a registrar, or a registrar's designee, during a telephone canvass contacts a telecommunication device for the deaf in an elector's household, such call shall not constitute an attempt to contact the elector unless the registrar, or the registrar's designee, uses a similar device or uses a message relay center. No elector's name shall be removed from the active registry list pursuant to said section 9-35 as a result of information obtained during a telephone canvass, unless the registrar believes such information is reliable and sufficient to enable the registrar to determine if the elector is entitled to remain on the list under the provisions of this chapter. . . . (Emphasis added.)

5. General Statutes § 9-35 reads, in pertinent part, as follows:

(a) The registrars, on the Tuesday of the fifth week before each regular election, shall be in session for the purpose of completing a correct list of all electors who will be entitled to vote at such election. Such registry list shall consist of an active registry list and an inactive registry list. Such session shall be held during such hours between nine o'clock a.m. and five o'clock p.m. as the registrars find necessary to complete the list. Notice of such session shall be given at least five days before the session by publication in a newspaper having a circulation in such municipality, if any, and by posting on the signpost therein, if any, or at some other exterior place near the office of the town clerk. Such publication shall not be required to be in the form of a legal advertisement.

(b) At such session and on any day except on the day of an election or primary, *the registrars shall remove from the list the name of each elector who has died, who has been disfranchised or who has confirmed in writing that the elector has moved out of the municipality*, except electors entitled to remain on such list under the provisions of this chapter. *An elector shall be deemed to have confirmed in writing that the elector has moved out of the municipality* if (1) the elector has submitted a change of address form for purposes of a state motor vehicle operator's license, unless the elector states on the form that the change of address is not for voter registration purposes, (2) the elector has

submitted a change of address form to a voter registration agency, as defined in section 9-23n, and such agency has provided such change of address to the registrars of voters, *or (3) the registrars of voters have received a cancellation of previous registration from any other election official indicating that such elector has registered as an elector outside such municipality.* . . . (Emphasis added.)

6. General Statutes § 9-42 reads, in pertinent part, as follows:

(a) If it appears at any time that the name of an elector who was formerly admitted or registered as an elector in a town and who is a bona fide resident of such town has been omitted from the active registry list compiled under section 9-35 *by clerical error*, the registrars of voters shall add such name to such list; provided no name shall be added to the active registry list on election day without the consent of both registrars of voters. . . . (Emphasis added.)

7. The investigation here revealed that after the incident described above, the Respondent New Canaan Registrars of Voters conducted an inquiry into how the Complainant came to be removed. They timely responded to the Commission investigation herein and turned over the results of their inquiry to the Commission. They discovered the following:

- John H. Tremaine originally registered in New Canaan on September 29, 1992.
- According to notations attached to his original voter registration card (“VRA card”) (retained by the New Canaan registrars), on Jan 9, 2009, the New Canaan registrars received information either from the Essex Registrars or through Connecticut Voter Registration System (“CVRS”), that Mr. Tremaine’s “record” was “taken” by Essex, and removed from New Canaan’s “active” files.
- The supposed move was noted on John Tremaine's registration card in the New Canaan office, and the VRA card was put in New Canaan’s “Off” file in 2009.
- At the same time, Mr. Tremaine's twin brother, Burton Tremaine (who has the same date of birth as the Complainant) apparently registered in Essex, CT.
- The New Canaan registrars have no record as to when, how, or why but the error appears to have been quickly found and John Tremaine was returned to the New Canaan active file on CVRS (by New Canaan, as Essex would not be able to unilaterally register him in another town) and subsequently appeared on all New Canaan voter registry lists, and voted in several elections between 2009 and 2014 without incident.

- Based on their review of the New Canaan VRA card files when this Complaint was filed, they found that the old card had been marked and filed with the “Off” cards and had not been returned to the active file.
 - The New Canaan registrars determined that the error occurred in their office in 2015 during their annual canvass of voters. All voter files that had been “off” for 4 years or more were then deleted from CVRS (SOTS keeps archive records of all voters, so a continuing record exists there).
 - They indicated that what appeared to have happened was that in the course of their review of the VRA cards in the paper “off” file, they found Mr. Tremaine’s VRA card, which indicated on its face that it had been in in the “Off” file for 5 years. Upon discovering the card during the canvass, they wrongly assumed that the CVRS record matched up and they deleted the CVRS record without closely examining it.
8. The Respondent Registrars assert that they regret the inconvenience and the denial of voting rights this caused the Complainant at the caucus, but also assert that the error was corrected the next day, that the error was acknowledged to the Complainant in a timely manner, and that they apprised the Complainant of his right to contact the SEEC. They assert that it was a single mistake, corrected in a timely manner, and was the partial result of the duplicate dates of birth and last name and human error. Finally they assert that the problem occurred in several steps along the way—spanning five years and because of this was not caught.
 9. The Commission investigation included a review of the archived CVRS records and confirmed that Mr. Tremaine had a long record of being registered and voting from his New Canaan address as far back as at least 1996. CVRS indicates that on January 12, 2009, Mr. Tremaine’s address was changed to the address in Essex. On February 24, 2009, the address was changed back to New Canaan. The archive did not contain information as to who made either of these changes. However, the archive did confirm that Mr. Tremaine’s digital record was deleted on March 27, 2015 by Mr. Cody, the New Canaan registrar.
 10. The investigation revealed that the CVRS system is set up such that while Essex could have unilaterally taken John Tremaine from New Canaan and moved him to Essex, they would not have been able to accomplish moving him back. Only New Canaan could have added him back to their rolls.
 11. As such, this establishes that New Canaan was involved in John Tremaine’s return to New Canaan via the CVRS system and as such, were aware that he had been returned. And, despite being aware of the Complainant’s return to their rolls, New Canaan forgot to move his paper VRA out of their paper “off” file.

12. Accordingly, while the mistake by the Essex registrars is Ground Zero for the subsequent events here, the first material error became New Canaan's failure to take John Tremaine's VRA out of their paper "Off" file.
13. Moreover, even despite the New Canaan ROV's error in 2009, John Tremaine's removal was preventable. Despite the VRA being in the "Off" section of the New Canaan ROV's paper files, there was no authority to remove, much less delete, the CVRS record. The paper files of the New Canaan ROVs are not, alone, the official registry list.
14. While CVRS is not the sole authority as to a voter's registration status, neither is a paper record. In order to determine whether a voter had been "Off" for a period sufficiently long to justify deleting a *digital* record, the New Canaan registrars should have consulted *both* the paper files *and* the digital files.
15. Instead, the Respondent Registrars relied *only* on their internal system of *paper* record keeping to determine whether the Complainant had been "Off" for more than 4 years. They then opened and deleted a CVRS *digital* record either without reviewing that digital record, or despite having reviewed that record.
16. In consideration of the aforesaid, the Commission concludes that the Respondents violated General Statutes §§ 9-32 & 9-35 by removing a voter from the registry list without sufficient authority to do so.
17. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
18. The Commission does not take lightly these types of errors. The laws have been written to make it very difficult to completely remove a voter. From the Constitution to the statutes and regulations, the regulatory scheme surrounding elections favors enfranchisement and makes election officials go through many checks and balances before a voter fully loses his/her franchise.

19. Removal of a voter is serious. In this case, it lead to John Tremaine being unable to participate in a vital democratic process—here, a party caucus—in which he should have had every right to participate.
20. Moreover, this issue appears to have been avoidable. It took two avoidable errors—a failure to make the change back in their own paper filing system and then an overreliance on said system—for Mr. Tremaine to have been removed in 2015. There are backstops in place to avoid this kind of error and the Respondent Registrars went through them.
21. The final removal gives the Commission the greatest pause. Deleting the record would have required the Respondent Registers to *open* the record, which would have told them that John Tremaine was an *active* voter.² Either: a) they didn't bother to read the CVRS record or: b) they read the CVRS record and chose to ignore this evidence over their own paper card system. Neither speaks well to their attention to detail in this instance.
22. However, the Commission does acknowledge that there are some factors that mitigate the severity of the liability here. The statutes also acknowledge that human clerical error is inevitable. General Statutes § 9-42 allows registrars to quickly return those voters who have been removed by clerical error up to and including Election Day.³ Had the registrars discovered this error at either an election, primary, or referendum, they could have restored the Complainant's privileges immediately and allowed him to cast his ballot. The peculiar requirements of the caucus rules did not allow immediate restoration in this instance.
23. The Commission also notes that the Respondent Registrars have no previous history in this area.
24. Additionally, there does not appear to be any evidence of bad faith, but as explored above, their judgment was poor. To their credit, the Respondent Registrars were very forthcoming in addressing the charges in this case. They were very cooperative with the Commission's investigation and made no attempts to avoid responsibility.
25. Similar matters before the Commission are rare; such removals are easily reversible at the polling place in a referendum, primary, or election through the restoration provision in § 9-

² The CVRS archive shows that it was Mr. Cody who did the actual deletion, however the Respondent Registrars are jointly and severally liable under the statutes here.

³ (a) If it appears at any time that the name of an elector who was formerly admitted or registered as an elector in a town and who is a bona fide resident of such town has been omitted from the active registry list compiled under section 9-35 by clerical error, the registrars of voters shall add such name to such list; provided no name shall be added to the active registry list on election day without the consent of both registrars of voters. . . .

42. However, § 9-42 does not provide for immediate restoration of privileges in order to participate in a caucus, which is what the Complainant was attempting to do here when the issue was discovered

26. The most recent case on point is *In the Matter of a Complaint by Valerie W. Herrick, Old Saybrook*, File No. 2004-109, which involved a situation in which the Complainant elector owned 2 residential properties in town. The Complainant had moved between elections from Residence 1, which was in District 1, to Residence 2, which was in District 2. She appeared at the District 1 polling place and asserted that she lived at Residence 2, which was in District 2. When she was sent to District 2, she showed ID that portrayed an address in Residence 1 (as she had forgotten to make the address change with the DMV). In both instances the moderators, and later, the registrars, checked *only* the polling place lists on the addresses given and not the full registry list. Had they checked the full registry list, they would have found the Complainant's name and could have affected a transfer via § 9-42. Despite the Complainant's own contribution to the issue by giving conflicting addresses to the elections officials, the Commission found that the registrars failed to do their due diligence by not checking the full list and levied a civil penalty of \$350.

27. Here, as stated above, the Commission did not find evidence suggesting that the Respondent Registrars failed in bad faith. The oversight is much the same as the oversight in *Herrick*. While the facts of this matter were a little convoluted, the errors here were eminently avoidable, as they were in *Herrick*. In consideration of the aforesaid, the Commission will agree to settle the matter in exchange for a civil penalty of \$450, similar to *Herrick*,⁴ along with the Respondent's agreement to henceforth strictly comply with the prescriptions of General Statutes § 9-32 & 9-35.

28. The Respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.

29. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

⁴ Adjusting for inflation.

ORDER

IT IS HEREBY ORDERED that the Respondent New Canaan Registrar of Voters Office shall pay a civil penalty of \$450 and will henceforth strictly comply with the requirements of General Statutes §§ 9-32 & 9-35. *Civil Penalty reduced to \$350. If received within 10 days of the adoption of this agreement.*

The Respondents:⁵

For the State of Connecticut:

Joan McLaughlin
Republican ROV

BY: [Signature]
Michael J. Brandi, Esq.
Executive Director and General Counsel
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: March 9, 2017

Dated: 3/22/17

George J. Cady
Democratic Registrar

Dated: March 9, 2017

Adopted this 22 day of March of 2017 at Hartford, Connecticut

[Signature]
Anthony Castagno, Chairman
By Order of the Commission

⁵ Since the Office of the Registrar of Voters are the respondents here and since registrars are jointly and severally responsible for executing the responsibilities of the office of Registrar of Voters under Title 9, one or both of the current registrars may sign and effectuate this agreement.

RECEIVED
STATE ELECTIONS

MAR 20 2017

ENFORCEMENT COMMISSION